mon law privilege. "It cannot be that the incidents of royalty are to adhere to the vestal of republicanism, when she has trod the diadem of kings under her feet and broken the sceptre of power." He admits the sovereign can pass laws giving itself this preference, but it is not an incident before it is willed, or why, he asks with a good deal of force, should the United States have to assert it by an express statute? "Taxes," he adds, "debts which are due to the State as a sovereign for the protection of both the citizen and property, are entitled to a preference." Michigan in 1910 refused to hold that such a priority exists without a statute, in *Zimmerman v. Chelsea,* 127 N. W., 351. New Jersey decided *contra* to the principal case in *Freeholders of Middlesex County v. State Bank,* 30 N. J. Eq., 311. They say in this case, if it existed, it is queer it had never been exercised in over a hundred years; and if they adopt it at all they would have to adopt it in all its "iron rigor," for it has not been modified by statute. They deny it absolutely, but also hold the State is not entitled to it here in any event, for there had been a receiver appointed, which divested the debtor of title and defeated any priority the State might have had, even under the English rule.

The principal case is to be distinguished from a line of cases where the public moneys were deposited in violation of law and then mingled with general assets. In these cases the State is held to have a preferred claim on the ground of a trust; the public money is held by the bank as a trust fund which the general creditors cannot reach. *State v. Bruce,* 102 P. (Idaho), 831; *State v. Throm,* 6 Idaho, 323.

It can be seen that there is a hopeless conflict on this question. The difficulty of settling it judicially is shown by the decisions in New York. The simplest way to settle it seems to be by statute; it seems a case peculiarly calling for a statutory regulation, as most of the points in insolvency and bankruptcy are regulated in this way. As to whether by adoption of the common law merely this prerogative was given to the State, there seems to be about the same amount of authority and reason on either side, as far as taxes are concerned, at least.

VOLUNTARILY INCURRING DANGER TO SAVE LIFE OF ANOTHER PERSON AS CONTRIBUTORY NEGLIGENCE.

In the recent case of *Perpich v. Leetonia Mining Co.,* 137 N. W., 12, it was held, that a person who voluntarily attempted to rescue

one whose life was imperiled by the negligence of another might recover therefor from the negligent person if the act of attempted rescue was not extreme recklessness.

The plaintiff in the principal case left a position of safety and attempted to rescue one who had been placed in a perilous situation through the defendant's negligence. The plaintiff was injured in the explosion which followed. The Court said that the act of the plaintiff was not negligence *per se*. This decision seems to be in accord with the weight of authority both in England and the United States. The law recognizes the duty of everyone to society in general, and justifies the assuming of greater risks to protect human life than would be sanctioned under other circumstances. In this class of cases the "duty" is more of a moral obligation, than a legal duty.

In the case of *Eckert v. Long Island R. R. Co.*, 43 N. Y., 503, a man rescued a boy at the sacrifice of his own life, from an approaching train. His widow brought an action against the railroad company, which had been negligent in running its train at a higher rate of speed than that allowed in the town. The plaintiff recovered judgment. In the opinion the Court said: "The law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless the exposure is clearly rash and reckless." In the case of *L. & N. R. R. Co. v. Orr*, 121 Ala., 489, the Court said that risking one's life in an effort to save the life of another cannot be said to be a rash and reckless act if the appearance justifies a belief that he can effect a rescue, even though he shall also have a reason to believe, and in fact does believe, that he may fail or receive grievous injury himself.

These two decisions are among the leading American authorities on this subject and indicate that the Courts do not scan very closely the grounds of hope a person may have in going into danger in order to save others, where exigency demands instantaneous decision and action. There are expressions in some of the cases, however, to the effect that the intervention must be in circumstances where the intervener can act "without incurring great danger to himself." This undoubtedly is an erroneous test. The "duty" or "obligation" does not become any the less by the greater imminency of the danger. The act may be instinctive, or deliberate, and should be justified in either case if there is a *bona fide* attempt to save life or limb. It has been justly said that there is no legal duty on the plaintiff to rescue one who is in

danger of loss of life, and it is clear that in the Eckert case *supra*, the child could not have maintained an action against the plaintiff's husband for not rescuing it; his act was purely voluntary, but it was justifiable, and the negligence of the defendant was not. In the case of *Donahoe v. Wabash R. R. Co.*, 83 Mo., 560, it was held that the railroad company could not be made liable for injuries suffered by one who, with the most praiseworthy motive, rushed in front of a train to rescue another who was unlawfully on the track, the train being managed prudently. In this case neither party was at fault and there could be no recovery.

The privilege of rescue under obvious danger is not to be extended to cases in which mere property is imperiled, or even, it has been held, to the rescue of sensitive animals, such as horses; although taking a moderate degree of personal risk ought not to be considered a fault. *Deville v. Southern & R. Co.*, 50 Cal., 383. The general rule therefore seems to be that it is not contributory negligence *per se* for one with reasonable prudence to expose himself to danger, for the purpose of saving his own or another's property from injury. *Luming v. Illinois Central R. R. Co.*, 81 Iowa, 246. In the case of *Taylor v. Home Tel. Co.*, 163 Mich., 458, the employees of the defendant company negligently removed a cock from a city water main, and permitted the water to flow into the apartment in which the plaintiff was a care taker. The plaintiff, in attempting to close the window through which the water was entering, became soaked with the water and illness followed. The Court found that she had deliberately walked into the water, the maxim *volenti non fit injuria* applied, and that she was not entitled to recover. It would seem therefore that the sound rule upon which recovery is based depends upon the reasonableness of the plaintiff's act.

The justification for the act in attempting to rescue one whose life is in danger is, that the negligence of the defendant working through a person's feelings has caused him to act. In so risking his own life he does not become a volunteer if the act is not one of extreme recklessness. One text writer justifies the act on the ground that the employer has given an implied order, in case of danger to life, to assist as much as possible. This "implied order," if you can choose to call it by that name, arises from the general duty to perserve human life, and the right to recover for injuries received in attempting to save life or property which has

been imperiled by the negligence of another depends upon the reasonableness of the act.

GARNISHMENT OF THE CONTENTS OF A SAFETY DEPOSIT BOX.

The Supreme Court of Rhode Island in the recent case of *Tillinghast v. Johnson,* 82 Atl., 788, reaches the conclusion that a safety deposit company is subject to garnishment as to contents of a box which it receives in the ordinary course of business, though it neither knows nor is expected to know what those contents are, and the owner of the box alone has the key.

Garnishment is a proceeding by which plaintiff in action seeks to reach the choses in action of defendant by calling into Court some third party who has such effects in his possession or who is indebted to the defendant. 20 *Cyc.,* 978.

The cases are not numerous which involve the question of the garnishment of the contents of a safety deposit box or safe.

In the case of *National Safe Deposit Co. v. Stead,* 250 Ill., 584, it is held that the relation between a safety deposit company and lessee is that of bailee and bailor. The fact that the company does not know and is not expected to know the character and the description of the property deposited does not change that relation.

The Courts which follow the doctrine of the principal case assume that the relation between the depositor and depositary is that of bailor and bailee, and that therefore there is possession in the safety deposit company which will subject it to a garnishment process. *Washington, etc., Co. v. Susquehanna Coal Co.,* 26 App D. C., 149.

The Court in the case of *Trowbridge v. Spinning,* 23 Wash., 48, states: "At any time on the request of the defendant the garnishee could put it within the power of the defendant to remove the contents of the box and the defendant could not remove the contents without the consent and active coöperation of the garnishee. As against the defendant then the garnishee had control of the contents of the box."

The leading case in support of the doctrine *contra* to that of the principal case is *Gregg v. Hilson,* 8 Phila., 91, which holds that the contents of a safety deposit compartment of which the depositor held the keys, and which by the contract of rental the